

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RALPH TRULL,	05 11306 RGS
)
Plaintiff,)
)
v.)
MATTRESS GIANT CORPORATION,	Civil Action No. <u>65143</u>
	MAGISTRATE JUDGE <u>MDB</u>
Defendant.)
)
<u>NOTICE OF REMOVAL</u>	
RECEIPT # <u>750</u>	
AMOUNT \$ <u>750</u>	
SUMMONS ISSUED <u>NIA</u>	
LOCAL RULE 4.1	
WAIVER FORM	
MCF ISSUED	
BY DPTY. CLK <u>JRW</u>	
DATE <u>6/28/05</u>	

Pursuant to 28 U.S.C. § 1441(a), (b) and (c), Defendant Mattress Giant Corporation ("Mattress Giant" or the "Company") hereby removes to this Court the above-captioned action pending in the Superior Court Department of the Trial Court, Plymouth County, Massachusetts, Civil Action No. PLCV2005-0398-A (the "Action"). Removal of the Action is proper for the following reasons:

BASIS FOR REMOVAL

1. Removal of the Action is proper under 28 U.S.C. § 1331 because Plaintiff Ralph Trull's ("Plaintiff's") Complaint asserts claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. – a federal statute. See Complaint at ¶ 29 of Count III. The claim therefore arises under the laws of the United States, as required for removal by 28 U.S.C. § 1331.
2. Removal of the Action is also proper under 28 U.S.C. § 1332 because there is complete diversity between the parties and the matter in controversy exceeds \$75,000.00. Plaintiff is a citizen of Massachusetts. Mattress Giant is a citizen of Texas, where its headquarters are located, and Delaware, its state of incorporation. Mattress Giant is not a citizen

of Massachusetts. In addition, Plaintiff's Complaint alleging handicap discrimination under M.G.L. c. 151B and Title VII of the Civil Rights Act of 1964, intentional infliction of emotional distress and wrongful termination seeks damages in excess of \$75,000.00.

3. Pursuant to 28 U.S.C. § 1441(a), (b) and (c), the Company may remove Plaintiff's claims to this Court.

4. The Company has contemporaneously filed the attached Notice of Filing of Notice of Removal, pursuant to 28 U.S.C. § 1446(d), with the Clerk of the Plymouth Superior Court, and contemporaneously served both Notices on Plaintiff's counsel. The Notice of Filing of Notice of Removal is attached hereto as Exhibit A.

TIMELINESS OF REMOVAL

5. The Action was filed by Plaintiff in Plymouth Superior Court on or about April 7, 2005. Counsel for the Company accepted service of the Summons and Complaint on or about May 26, 2005. In accordance with 28 U.S.C. § 1446(a), all process, pleadings and orders entered by Plymouth Superior Court, including a true and accurate copy of the Summons and Complaint, are attached hereto as Exhibit B.

6. This Notice of Removal is filed with this Court on a timely basis, as required by 28 U.S.C. § 1446(b), as it is being filed within thirty (30) days of the service of Plaintiff's Complaint upon the Company. Likewise, this Notice is filed within thirty days of the Company's earliest date of actual notice of Plaintiff's Complaint, as the time of service is the first time the Company had possession of a copy of Plaintiff's Complaint.

WHEREFORE, Mattress Giant Corporation respectfully requests that the Action proceed in this Court as properly removed hereto.

Respectfully submitted,

MATTRESS GIANT CORPORATION

By its attorneys,

HOLLAND & KNIGHT LLP



Liam T. O'Connell (BBO# 558249)
Maura J. Gerhart (BBO# 654695)
Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116
(617) 523-2700

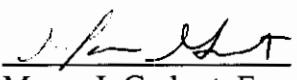
Date: June 21, 2005

2999655_v1

CERTIFICATE OF SERVICE

I certify that I have caused a true and correct copy of the foregoing Notice of Removal to be served on the parties listed below via first class mail on this 21st day of June, 2005:

Gregory M. Doyle, Esq.
4 Pearl Street
Dedham, MA 02026


Maura J. Gerhart, Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Ralph Trull v. Mattress Giant Corporation

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 420 or AO 121
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310,
315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371,
380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660,
690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES NO

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO 7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES NO A. If yes, in which division do all of the non-governmental parties reside?Eastern Division Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Liam T. O'Connell, Esq.ADDRESS Holland & Knight, LLP, 10 St. James Avenue, Boston, MA 02116TELEPHONE NO. 617-523-2700

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS Ralph Trull		DEFENDANTS Mattress Giant Corporation																															
(b) County of Residence of First Listed Plaintiff <u>Plymouth</u> (EXCEPT IN U.S. PLAINTIFF CASES)		County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.																															
(c) Attorney's (Firm Name, Address, and Telephone Number) Gregory M. Doyle, Esq. (781) 326-4733 4 Pearl Street, Dedham, MA 02026		Attorneys (If Known) (617) 523-2700 Liam T. O'Connell, Esq., Holland & Knight, LLP 10 St. James Avenue, Boston, MA 02116																															
II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)																															
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 <input type="checkbox"/> 4																														
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5																														
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6																														
IV. NATURE OF SUIT (Place an "X" in One Box Only)																																	
<table border="1"> <tr> <td>CONTRACT</td> <td>TORTS</td> <td>FORFEITURE/PENALTY</td> <td>BANKRUPTCY</td> <td>OTHER STATUTES</td> </tr> <tr> <td> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 290 All Franchise </td> <td> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury </td> <td> PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability </td> <td> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other </td> <td> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark </td> </tr> <tr> <td>REAL PROPERTY</td> <td>CIVIL RIGHTS</td> <td>PRISONER PETITIONS</td> <td>SOCIAL SECURITY</td> <td>Exchange</td> </tr> <tr> <td> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property </td> <td> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights </td> <td> <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition </td> <td> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act </td> <td> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DJWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) </td> </tr> <tr> <td></td> <td></td> <td></td> <td>FEDERAL TAX SUITS</td> <td>Customer Challenge</td> </tr> <tr> <td></td> <td></td> <td></td> <td> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 </td> <td> <input type="checkbox"/> 875 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes </td> </tr> </table>		CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 290 All Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	Exchange	<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DJWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))				FEDERAL TAX SUITS	Customer Challenge				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 875 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	
CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES																													
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 290 All Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark																													
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	Exchange																													
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DJWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))																													
			FEDERAL TAX SUITS	Customer Challenge																													
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 875 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes																													
V. ORIGIN (Place an "X" in One Box Only)					Appeal to District Judge from Magistrate Judgment																												
<input type="checkbox"/> 1 Original Proceeding	<input checked="" type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7																											
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. §1441																																	
VI. CAUSE OF ACTION Brief description of cause: Disability Discrimination, Wrongful Termination, Emotional Distress																																	
VII. REQUESTED IN COMPLAINT:		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23		DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No																												
VIII. RELATED CASE(S) IF ANY		(See instructions): JUDGE		DOCKET NUMBER																													
DATE	SIGNATURE OF ATTORNEY OF RECORD																																
FOR OFFICE USE ONLY																																	
RECEIPT #	AMOUNT	APPLYING IFF	JUDGE	MAG. JUDGE																													

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT

RALPH TRULL,

Plaintiff,

v.

MATTRESS GIANT CORPORATION,

Defendant.

Civil Action No. PLCV2005-0398-A

NOTICE OF FILING NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE SUPERIOR COURT

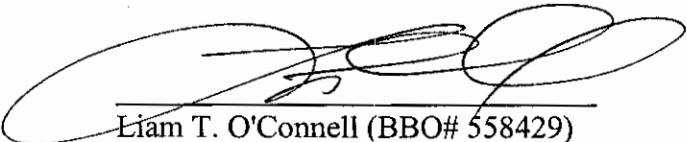
NOTICE IS HEREBY GIVEN that on the twenty-first day of June, 2005, Defendant Mattress Giant Corporation filed a Notice of Removal of this action in the United States District Court for the District of Massachusetts. A true and accurate copy of the Notice of Removal so filed is attached hereto as Exhibit 1. Therefore, Defendant respectfully requests that this Court proceed no further in this matter.

Respectfully submitted,

MATTRESS GIANT CORPORATION,

By its attorneys,

HOLLAND & KNIGHT LLP



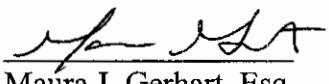
Liam T. O'Connell (BBO# 558429)
Maura J. Gerhart (BBO# 654695)
Holland & Knight LLP
10 St. James Avenue
Boston, Massachusetts 02116
(617) 523-2700

Dated: June 21, 2005

CERTIFICATE OF SERVICE

I certify that I have caused a true and correct copy of the foregoing Notice of Filing Notice of Removal to be served on the parties listed below via first class mail on this 21st day of June, 2005:

Gregory M. Doyle, Esq.
4 Pearl Street
Dedham, MA 02026



Maura J. Gerhart, Esq.

3006172_v1

SEE INSTRUCTIONS ON BACK OF THIS FORM
PLEASE TYPE OR PRINT EXCEPT WHERE SIGNATURE IS REQUIRED

CIVIL ACTION COVER SHEET		Trial Court of Massachusetts SUPERIOR COURT DEPARTMENT Plymouth Division	DOCKET NUMBER
PLAINTIFF(S) Ralph Trull		DEFENDANT(S) Mattress Giant Corporation	
ATTORNEY(S) FIRM NAME, ADDRESS AND TEL. Gregory M. Doyle 4 Pearl Street Dedham, MA 02026 (781)326-4733 Board of Bar Overseers # (Required) 567016		ATTORNEY(S) (if known)	
ORIGIN CODE AND TRACK DESIGNATION			
Place an <input checked="" type="checkbox"/> in one box only:			
<input checked="" type="checkbox"/> 1. F01 Original Complaint <input type="checkbox"/> 2. F02 Removal to Sup. Ct. c231, s. 104 (F) <input type="checkbox"/> 3. F03 Retransfer to Sup. Ct. c231, s. 102C (X)		<input type="checkbox"/> 4. F04 District Ct. Appeal c231, s. 97 (X) <input type="checkbox"/> 5. F05 Reactivated after Rescript; Relief from judgment/order (Mass. R Civ. P. 60 (X)) <input type="checkbox"/> 6. E10 Summary process appeal (X)	
TYPE OF ACTION AND TRACK DESIGNATION (See Reverse Side)			
CODE NO. <u>B99</u>	TYPE OF ACTION (specify) <u>Employment Discrimination</u>	TRACK (F)	IS THIS A JURY CASE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
1. PLEASE GIVE A CONCISE STATEMENT OF THE FACTS: (Required in ALL Types of Actions) The Plaintiff was employed by the Defendant and discharged due to his complaints vis-a-vis OSHA regulations and was also discriminated against on the basis of a disability.			
2. IN A CONTRACT ACTION (CODE A) OR A TORT ACTION (CODE B) STATE, WITH PARTICULARITY, MONEY DAMAGES WHICH WOULD WARRANT A REASONABLE LIKELIHOOD THAT RECOVERY WOULD EXCEED \$25,000:			
3. PLEASE IDENTIFY, BY CASE NUMBER, NAME AND DIVISION, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT.			

SIGNATURE OF ATTORNEY OF RECORD OR PLAINTIFF

Gregory M. Doyle

DATE

*4/17/2005***OFFICE USE ONLY - DO NOT WRITE BELOW THIS LINE****DISPOSITION**

A. Judgment Entered

 1. Before jury trial or non-jury hearing

B. No Judgment Entered

 6. Transferred to District

RECEIVED

BY:

DATE

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT OF THE

TRIAL COURT OF THE COMMONWEALTH

CIVIL ACTION

NO. PLCV2005-0398-A

Ralph Trull

, Plaintiff(s)

Mattress Giant Corporation

, Defendant(s)

SUMMONS

To the above-named defendant :

Gregory M. Doyle

You are hereby summoned and required to serve upon plaintiff attorney, whose address is 4 Pearl St., Dedham MA 02026, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at Brockton either before service upon plaintiff attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff claim or you will thereafter be barred from making such claim in any other action.

Witness Barbara J. Rouse Esquire, at Brockton, the 8th day of April, in the year of our Lord two thousand and FIVE.....

Francois R. Powers

CLERK.

NOTES

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.
3. To plaintiff's attorney: please circle type of action involved -- Tort -- Motor Vehicle Tort -- Contract -- Equitable Relief -- Other.

PROOF OF SERVICE OF PROCESS

I hereby certify and return that on 20, I served a copy of the within summons, together with a copy of the complaint in this action, upon the within-named defendant, in the following manner (See Mass. R. Civ. P. 4 (d) (1-5):

Dated:

20

N. B. TO PROCESS SERVER:

PLEASE PLACE DATE YOU MAKE SERVICE ON DEFENDANT IN THIS BOX ON THE ORIGINAL AND ON COPY SERVED ON DEFENDANT.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF MASSACHUSETTS

PLYMOUTH, ss.

BROCKTON SUPERIOR COURT
DOCKET NO.

RALPH TRULL

v.

MATTRESS GIANT CORPORATION

COMPLAINT FOR DAMAGES

Parties:

- 1.) The Plaintiff, RALPH TRULL, is a Massachusetts resident living and residing in Abington, Plymouth County, Commonwealth of Massachusetts;
- 2.) The Defendant, MATTRESS GIANT CORPORATION, is a foreign corporation doing business and registered to do business in Massachusetts and with offices in Franklin, Norfolk County, Commonwealth of Massachusetts;

Facts:

- 3.) The Plaintiff, RALPH TRULL, was employed by the Defendant, MATTRESS GIANT CORPORATION, between October 9, 2003 and March 4, 2004;
- 4.) Throughout the above period of time, the Plaintiff, RALPH TRULL'S, the quality and quantity of his work product consistently met or exceeded the job's requirements.;
- 5.) The Plaintiff, RALPH TRULL, had the position of Distribution Center Manager at the Defendant, MATTRESS GIANT'S, location of 40 Kenwood Circle, Franklin, Norfolk County, Massachusetts;
- 6.) While in this position, the Plaintiff's responsibilities included location management and overall operation of the Franklin Distribution Center;

- 7.) This included supervising all employees, training, and disciplining of employees, implementation of company policy at the location, ensuring inventory, payroll and accounting controls were implemented and adhered to and the operation of the center in a safe and efficient manner in compliance with company policy, state and federal laws and regulations;
- 8.) Included in those responsibilities were compliance with all Occupational Safety and Health Administration ("OSHA") regulations which applied to the facility;
- 9.) In late 2003 and early 2004, the Plaintiff began informing his boss, Richard Gibbons, of various safety violations and issues that concerned the Plaintiff at the Franklin location. Some of these violations concerned physical safety risks, fire risks within the facility, while others concerned training issues among the staff;
- 10.) In large part, in communications with Mr. Gibbons that the Plaintiff had, Mr. Gibbons agreed with these violations to the Plaintiff;
- 11.) The Plaintiff, during his employ, also brought various violations of OSHA rules and regulations to the attention of other management officials of the Defendant with authority over the facility;
- 12.) However, despite repeated requests for the ability, funding and tools to remedy these issues, the Defendant, MATTRESS GIANT, did not act on these concerns and showed active resistance to the Plaintiff, RALPH TRULL'S safety concerns while the Plaintiff remained employed by the Defendant.;
- 13.) The Defendant was specifically told by management that the company had more important things to do with its time and money than worry about these issues;
- 14.) Following complaining about these issues to the Company, the Plaintiff, Ralph Trull, began

to experience physical problems, stress and illness due to the issues he had raised not being taken seriously and the pressure of trying to manage a facility given the problems and risks the Plaintiff was aware of and had notified management of;

- 15.) Among the ailments the Plaintiff suffered were headaches, stress, chest pain, increased blood pressure and fatigue;
- 16.) The Plaintiff was diagnosed or was suffering from hypertension, stress and possible heart disease and was ordered by his medical providers to not return to work in late February of 2004 and into March of 2004. He was also placed on medications during this period of time.;
- 17.) On March 4, 2004 he was cleared by his doctor to return to light duty at work;
- 18.) Shortly after this time, the Defendant, MATTRESS GIANT CORPORATION, terminated the Plaintiff's employment citing "the events of the last few weeks" and claiming the Plaintiff was "no longer qualified to do the job."
- 19.) Following his termination, the Plaintiff reported numerous issues to OSHA he had attempted to address internally while employed with the Defendant and was met with resistance regarding from upper management;
- 20.) OSHA investigated numerous of these complaints and found several to be serious and/or repeat violations and fined the Defendant.

COUNT I-WRONGFUL TERMINATION OF EMPLOYMENT

- 21.) The Plaintiff realleges and incorporates by reference paragraphs 1-20.
- 22.) The Defendant terminated the Plaintiff's employment in bad faith and in violation of public policy in that their real motive for discharging the Plaintiff was in retaliation for his persistence in advocating within the company for a safe and healthy work place and for compliance with all local, state and federal laws by which the safety and health of workers at the Franklin facility were

protected by, including OSHA regulations relating to which the Plaintiff was later shown to have expressed valid concerns in relation to.;

23.) The Defendants discharge of the Plaintiff was based on a lack of reliable evidence, was carried out in violation of company personnel procedures which require a valid reason for termination and was a mere pretext to disguise their real motivation in terminating his employment relative to his desire to comply with the law and his status as a potential whistle blower;

24.) As a direct result and a foreseeable consequence thereof, the Plaintiff suffered loss of income and employment benefits, loss of business and personal reputation, medical expenses, other financial losses and mental and emotional distress;

COUNT II-INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS

25.) The Plaintiff realleges and incorporates by reference paragraphs 1-24.

26.) The Defendant intentionally and without justification inflicted severe emotional distress on the Plaintiff by extreme and outrageous behavior beyond the bounds of decency, such that a reasonable person would suffer emotional distress under the circumstances.

27.) As a proximate and foreseeable consequence thereof, the Plaintiff suffered bodily harm, mental and emotional distress, loss of income and employment benefits, medical expenses, and other financial losses.;

COUNT III-DISCRIMINATION BASED ON DISABILITY

28.) The Plaintiff realleges and incorporates by reference paragraphs 1-27.

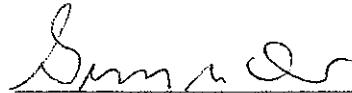
29.) The Defendant, by their conduct including discharging the Plaintiff, violated M.G.L. Ch. 151B and Title VII of the United States Code in that the Plaintiff is a member of a protected class suffering from a disability and was harmed by an employment decision to terminate

him based on or in part on his membership in that protected class.

30.) As a proximate and foreseeable consequence thereof, the Plaintiff suffered bodily harm, mental and emotional distress, loss of income and employment benefits, medical expenses, and other financial losses.

THE PLAINTIFF DEMANDS A JURY TRIAL

Respectfully Submitted,
RALPH TRULL,
By His Attorney,



Gregory M. Doyle
4 Pearl Street
Dedham, MA 02026
(781)326-4733
BBO#567016

Commonwealth of Massachusetts

County of Plymouth
 The Superior Court

CIVIL DOCKET# PLCV2005-00398-A

RE: Trull v Mattress Giant Corporation

TO: Gregory M Doyle, Esquire
 4 Pearl Street
 Dedham, MA 02026-4344

TRACKING ORDER - F TRACK

You are hereby notified that this case is on the **fast (F) track** as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

<u>STAGES OF LITIGATION</u>	<u>DEADLINE</u>
Service of process made and return filed with the Court	07/06/2005
Response to the complaint filed (also see MRCP 12)	09/04/2005
All motions under MRCP 12, 19, and 20 filed	09/04/2005
All motions under MRCP 15 filed	09/04/2005
All discovery requests and depositions completed	02/01/2006
All motions under MRCP 56 served and heard	03/03/2006
Final pre-trial conference held and firm trial date set	04/02/2006
Case disposed	06/01/2006

The final pre-trial deadline is not the scheduled date of the conference. You will be notified of that date at a later time.

Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.

This case is assigned to session A sitting in CtRm 4 (72 Belmont Street, Brockton) at Plymouth Superior Court.

Dated: 04/13/2005

Francis R. Powers
 Clerk of the Courts

BY: David Biggs
 Assistant Clerk

Location: CtRm 4 (72 Belmont Street, Brockton)
 Telephone: (508) 583-8250 ext. 305

Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130

Check website as to status of case: <http://ma-trialcourts.org/tcic>